

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

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|---------------------------------------|---|-------------------|
| United States of America, |) | CR 08-263-PHX-SMM |
| |) | |
| Plaintiff, |) | ORDER |
| |) | |
| vs. |) | |
| |) | |
| Rigoberto Aramburo-Lizarraga, et al., |) | |
| |) | |
| Defendants. |) | |

Pending before the Court is the Report and Recommendation of the Magistrate Judge [Doc. 82] regarding the release of material witnesses. Also pending before the Court are numerous pleadings related to the Magistrate Judge's Report and Recommendation. Although denominated in various forms, the material witnesses seek to affirm the Magistrate Judge's ruling, which recommends their release from custody. Defendant's opposition, whether through objection or appeal, seeks to detain the material witnesses pending trial. Having reviewed the pleadings in this matter, the Court issues the following ruling.

BACKGROUND

The Defendant¹ was arrested and charged with numerous counts related to alien smuggling and transportation of illegal aliens.

¹ Only one Defendant is appealing/objecting to the Report and Recommendation of the Magistrate Judge.

1 As is customary, the videotaped depositions of the material witness illegal aliens were
2 taken under a court order pursuant to 18 U.S.C. § 3144. The taking of those depositions
3 became protracted. To avoid any miscarriage of justice, the Court ordered that all of the
4 material witnesses be detained until all of the videotaped depositions were concluded and the
5 Magistrate Judge ordered their release.

6 On April 23, 2008, the Magistrate Judge entered her Report and Recommendation,
7 recommending that the Motion to Stay Release of Material Witnesses [Doc. 54] be denied
8 and the Motion for Release of Material Witnesses [Doc. 72] be granted. The Magistrate
9 Judge also ruled that release of the material witnesses be delayed for ten (10) days to allow
10 defense counsel time to file objections to the Report and Recommendation before this Court
11 in accordance with 28 U.S.C. § 636(b)(1).

12 Defendant Castaneda-Aramburo and the material witnesses have filed appropriate and
13 timely pleadings addressing the Report and Recommendation of the Magistrate Judge.

14 DISCUSSION

15 The Magistrate Judge found that all of the videotaped depositions had been properly
16 concluded and that the material witnesses should be released pursuant to 18 U.S.C. § 3144.

17 After reviewing all of the pleadings *de novo*, this Court agrees with the Magistrate
18 Judge that the defendants have failed to demonstrate that release in this case would be a
19 “failure of justice.” See Torres-Ruiz v. U.S. District Court for the S.D. of Cal., 120 F.3d 933,
20 933 (9th Cir. 1997). At best, the reasons proposed for further detention are speculative.
21 Moreover, the “A-files” of the material witnesses, if any, may have evidentiary relevance at
22 trial, if they contain any information that is contrary to the statements made by the material
23 witnesses during their depositions. But that is left for another day.

24 On April 28, 2008, subsequent to the Magistrate Judge’s Report and
25 Recommendation, the Government filed a Notice of Discovery and further demonstrated the
26 speculative nature of the Defendant’s position.

27 The Court also finds that oral argument would not be helpful.

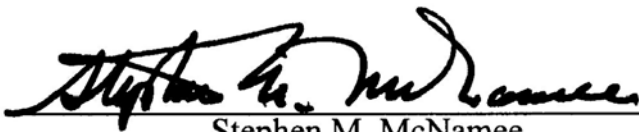
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1 **THEREFORE, IT IS ORDERED** adopting the Report and Recommendation of the
2 Magistrate Judge [Doc. 82] and releasing the material witnesses pursuant to 18 U.S.C. §
3 3144.

4 **IT IS FURTHER ORDERED** that the Motion to Stay Release of Material Witnesses
5 [Doc. 54] is **DENIED** and that the Motion for Release of Material Witnesses [Doc. 72] is
6 **GRANTED**.

7 **IT IS FURTHER ORDERED** that a copy of this order be sent to the United States
8 Marshals Service in addition to all counsel of record.

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10 DATED this 8th day of May, 2008.

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14 Stephen M. McNamee
15 United States District Judge
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